

**SUPREME COURT OF INDIA**

Commissioner of Central Excise Raipur

Vs

Steel Authority of India Limited

Civil Appeal No. 4987 of 2001

(Ashok Bhan and Markandeya Katju, JJ)

12.07.2006

**JUDGMENT**

**Ashok Bhan, J.**

The point involved in the present case is regarding the classification of three products, namely, Pitch Creosote Mixture (PCM), Road Tar and Pitch. The Tribunal by its order 13-11-2000 passed in Appeal No. E/1570/1995-C, has classified PCM and Road Tar under Chapter heading 2706 and Pitch under Chapter heading 2708.11.

2. Commissioner of Central Excise being aggrieved by the aforesaid order of the Tribunal has filed the present appeal claiming that PCM and Road Tar should be classified under Chapter heading 2708.11 instead of 2706 and Pitch under 2708.19 instead of 2708.11.

3. Counsel for the parties conceded that as per the judgment of this Court in Commissioner of Central Excise, Bolpur v. Steel Authority of India Ltd.] [Also reported in (S.C , all these items would fall under heading 2708.11.

4. Learned counsel for the respondent sought to contend that he is entitled to claim the benefit of the

exemption Notification No. 23/89 dated 1st March, 1989 for PCM used within the factory. This contention was rejected by the Commissioner in its order in original by holding that though the respondent had claimed that most of the PCM was used as fuel in the factory, but it did not produce any evidence regarding the exact quantity used during the said period; and that, in the absence of such evidence, the plea raised by the respondent could not be accepted. This finding of the Commissioner was not challenged by the respondent before the Tribunal. In view of the fact that the findings of the Commissioner on the aforesaid point was not challenged by the respondent before the Tribunal, the respondent cannot be permitted to raise this argument now before us.

5. In view of the decision of this Court in Steel Authority of India Ltd. (supra), PCM, Road Tar and Pitch are held to be classifiable under Chapter heading 2708.11. Accordingly, the appeal filed by the Revenue insofar as products PCM and Road Tar are concerned is accepted, while the same is dismissed insofar as the product Pitch is concerned.

6. The Tribunal has further recorded a finding to the effect that proviso to Section 11-A of the Act could not be invoked in the present case. This finding is affirmed.

7. The appeal stands disposed of in terms of the judgment in Steel Authority of India Ltd. (supra), leaving the parties to bear their own costs.